

MILDRED WILBUR HILLIARD,  
Appellant

v.

PORTLAND AREA DIRECTOR,  
BUREAU OF INDIAN AFFAIRS,  
Appellee

: Order Affirming Decision  
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: Docket No. IBIA 99-63-A  
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:  
: March 15, 2000

This is an appeal from a March 30, 1999, decision of the Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), which approved a restriction on Appellant's IIM account. For the reasons discussed below, the Board affirms the Area Director's decision.

On March 24, 1997, Appellant's son, Stephen K. Hilliard, applied to the Yakama Nation Credit Enterprise (Credit Enterprise) for a loan in the amount of \$10,500 for the purpose of purchasing a 28-foot fifth wheel trailer. Appellant signed the application as co-maker. The application was approved by a tribal credit officer on March 28, 1997.

On April 4, 1997, Appellant and her son signed a note in which they agreed to pay \$10,833.98 plus 8% interest, over a period of three years, with monthly payments in the amount of \$339.44. On the same day, Appellant signed a statement reading:

#### NOTICE TO COSIGNER

You are being asked to cosign a Promissory Note with the First Signer for the loan described at the bottom of this form. **THINK CAREFULLY BEFORE YOU DO.** Even though the loan proceeds will be given direct to the First Signer, you will be equally responsible for the repayment of the loan. Any agreement between you and the First Signer that the First Signer will make the loan payments **is not binding on the Credit Enterprise.** If any payment which comes due on the loan is not timely received, the Credit Enterprise will look to both you and the First Signer for payment. Even if the First Signer dies, becomes disabled, moves away, gets a divorce, sells or destroys the collateral for the loan, or for any other reason does not pay all or any part of the loan, you are nevertheless liable to pay the Note in full according to its terms. You may also have to pay costs, fees and/or collection costs which could increase the amount.

The Credit Enterprise can collect this debt from you without first trying to collect from the First Signer. The Credit Enterprise can use the same collection methods against you than can be used against the First Signer, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

**THIS NOTICE IS NOT THE CONTRACT THAT MAKES YOU  
LIABLE FOR THE DEBT. THE PROMISSORY NOTE - IF YOU SIGN  
IT - IS THE CONTRACT THAT MAKES YOU LIABLE FOR THE  
DEBT.**

Also on April 4, 1997, Appellant and her son signed a BIA document titled "ASSIGNMENT OF TRUST PROPERTY AND POWER TO LEASE," which stated in part:

In consideration of a loan from the lender, I hereby assign to the lender as security for repayment of such loan, the following: (a) All property, except land, which is now or may in the future be held in trust for me by the United States; (b) all income from trust land in which I now have or may in the future acquire an interest; (c) any income from any source and any funds [from] any source accruing to my individual Indian account.

This document was approved by the Superintendent, Yakama Agency, BIA, on the same day.

When Appellant's son fell behind in his loan payments, the Credit Enterprise sought to have a restriction placed on Appellant's IIM account under 25 C.F.R. § 115.9. <sup>1/</sup> Appellant requested and was given a hearing, as required by 25 C.F.R. § 115.10. The hearing was held at the Yakama Agency and was attended by Appellant and her daughter, as well as three representatives of the Credit Enterprise.

At the hearing, Appellant stated that she did not believe she should be accountable for her son's debt because her son had not been honest with her. She asked why the Credit Enterprise did not collect from her son. The Credit Enterprise representatives replied that they were taking his per capita payments (apparently his only funds) which were insufficient to cover the outstanding debt. Appellant then requested that the loan be rewritten, but the Credit Enter-

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<sup>1/</sup> 25 C.F.R. § 115.9 provides:

"Funds of individuals may be applied by the Secretary or his authorized representative against delinquent claims of indebtedness to the United States or any of its agencies or to the tribe of which the individual is a member, unless such payments are prohibited by act of Congress, and against money judgments rendered by courts of Indian offenses or under any tribal law and order code."

prise representatives replied that it could not be done because of the delinquency. Appellant criticized the Credit Enterprise for not taking action earlier and for not informing her earlier that her son had become delinquent. She conceded, however, that her signature appeared on the Notice to Cosigner, quoted above, although she said she did not remember signing it.

Following the hearing, the Agency Hearing Official issued a decision holding that Appellant's IIM account should be restricted until such time as the outstanding debt to the Credit Enterprise was paid off. He noted that, while it might not seem fair to Appellant, she had agreed to this result in the documents she signed.

Appellant appealed to the Area Director, who affirmed the Agency Hearing Official's determination on March 30, 1999.

Before the Board, Appellant expresses dissatisfaction with the manner in which the Credit Enterprise handled the loan. She does not, however, contend that the Credit Enterprise violated any provision of the loan documents or any provision of tribal or other applicable law.

As she did at the hearing, she requests, in essence, that the Credit Enterprise rewrite the loan in such a way that only her son would be liable for the debt.

The Credit Enterprise has not participated in this appeal. However, given the position taken by its representatives at the hearing, it would probably not be amenable to rewriting the loan. Even so, Appellant is free to attempt to persuade it to do so.

The Board cannot order the Credit Enterprise to rewrite the loan. The Credit Enterprise is a tribal entity, and the Board has no authority to review the actions of tribal officials. See, e.g., Hunt v. Aberdeen Area Director, 27 IBIA 173, 178 (1995), and cases cited therein. The Board's review authority here extends only to BIA's action in placing restrictions on Appellant's IIM account.

In appropriate circumstances, BIA may decline to authorize payment of debts from an IIM account under 25 C.F.R. § 115.9, provided its decision is well-considered and not arbitrary. See United States v. Acting Aberdeen Area Director, 9 IBIA 151, 89 I.D. 49 (1982), in which the Board affirmed BIA decisions not to honor setoff requests in cases where BIA had found that the individuals concerned needed the funds in their IIM accounts to pay for basic necessities, i.e., food, clothing, and shelter.

Appellant does not allege that she needs the funds in her IIM account to pay for basic necessities. Nor, as noted above, does she allege that the Credit Enterprise committed a violation of contract or law, such as might have justified a refusal by BIA to place restrictions on Appellant's IIM for the benefit of the Credit Enterprise. In fact, Appellant does not allege any error on the part of BIA.

Appellant admittedly signed the note and the "Notice to Cosigner," a document written in clear and emphatic language. Appellant's filings show her to be an educated and articulate person. The record shows that she is a retired teacher. Although she does not attempt to argue that she did not understand what she was signing, it seems unlikely that she would have succeeded with such an argument had she attempted to make it.

The loan documents clearly authorized the Credit Enterprise to take action against Appellant in the case of a default by her son. The Board finds that BIA did not err in placing restrictions on Appellant's IIM account in order to pay delinquent claims of indebtedness to the Yakama Nation.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Area Director's March 30, 1999, decision is affirmed.

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Anita Vogt  
Administrative Judge

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Kathryn A. Lynn  
Chief Administrative Judge